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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re JAMAAL M., a Person Coming  
Under the Juvenile Court Law.

B184532  
(Los Angeles County  
Super. Ct. No. YJ26404)

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMAAL M.,

Defendant and Appellant.

APPEAL from an order of the Los Angeles County Superior Court,  
Irma J. Brown, Judge. Affirmed as modified.

Anne E. Fragasso, under appointment by the Court of Appeal, for Defendant and  
Appellant

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney  
General, Pamela C. Hamanaka, Assistant Attorney General, Lawrence M. Daniels and  
Ryan M. Smith, Deputy Attorneys General, for Plaintiff and Respondent.

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Jamaal M. was declared a ward of the juvenile court and ordered into the short term camp community placement program after the court sustained a petition alleging he had threatened a school official.<sup>1</sup> Jamaal M. contends there is insufficient evidence to support the finding he threatened a school official and one of his probation conditions is unconstitutional. We affirm the order as modified.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **Jurisdiction Hearing**

Evidence introduced at the jurisdiction hearing established one morning Assistant Principal Thomas Franklin (Franklin) reminded then 14-year-old Jamaal M. his untucked shirt and low-riding pants violated school policy. Jamaal M. was defiant, but he tucked in his shirt and pulled up his pants, revealing a belt bearing a street gang insignia. Franklin told Jamaal M. to surrender the belt until the end of the day because it could not be worn on campus. The school administration prohibited student attire signifying street gang affiliation. Jamaal M. became angry and repeatedly cursed Franklin as he handed over his belt. Franklin ordered Jamaal to accompany him to his office. En route, Jamaal M. threatened to bring someone to school to cause Franklin bodily harm.

When Franklin and Jamaal M. entered the school office, Jamaal M. began knocking notebooks and fliers off the counter of the front office, repeatedly saying he and his father would “F. [Franklin] up.” Franklin testified he “would not put it past Jamaal M.” to carry out his threats. Franklin also testified he was concerned about the threats because Jamaal M. had pushed the principal on a prior occasion. Franklin “kept trying to get” Jamaal M. into his office, when the principal intervened, telling Franklin to call police. At that point, Franklin told Jamaal M. to go into his office and not to leave school. Jamaal M. immediately left the campus, although he returned some 30 minutes later.

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<sup>1</sup> Welfare and Institutions Code section 602, Penal Code section 71.

Jamaal M.'s motion to dismiss the petition was heard and denied.<sup>2</sup>

Jamaal M. neither testified at the hearing nor presented other evidence on his behalf.

The juvenile court sustained the allegation of threatening a school official, rejecting Jamaal M.'s claim the evidence merely established disrespectful behavior rather than the intent or the attempt to prevent the assistant principal from carrying out his duties. However, the court granted Jamaal M.'s motion to reduce the felony offense to a misdemeanor.<sup>3</sup>

### **Disposition Hearing**

Jamaal M. was declared a ward of the juvenile court and the offense of threatening a school official was declared a misdemeanor. The court ordered Jamaal M. into the short-term camp community placement program, subject to various probation conditions and calculated the theoretical maximum period of confinement as one year two months.

## **DISCUSSION**

### **1. Sufficiency of the Evidence**

Jamaal M. acknowledges the evidence presented at the adjudication hearing established he used profane language against Franklin; repeatedly threatened to “F [Franklin] up” while knocking items to the front office floor; and left the campus without permission. Nevertheless, he argues, as he did before the juvenile court, the evidence reflects merely “the idle ranting[] of an angry boy.” Jamaal M. contends there is no evidence he threatened Franklin with the intent to affect Franklin's performance of his official duties or had an apparent ability to carry out the threat. According to Jamaal M., the record demonstrates he fully cooperated with the assistant principal, “albeit in an indecorous manner,” and Franklin was never frightened.

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<sup>2</sup> Welfare and Institutions Code section 70.1.

<sup>3</sup> Penal Code section 17, subdivision (b).

The same standard of appellate review is applicable in considering the sufficiency of the evidence in a juvenile proceeding as in reviewing the sufficiency of the evidence to support a criminal conviction.<sup>4</sup> In either case we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence -- that is, evidence that is reasonable, credible and of solid value -- from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.<sup>5</sup> That standard is the same in cases where the People rely primarily on circumstantial evidence.<sup>6</sup>

The purpose of Penal Code section 71 is to prevent threatening communications to public officers or employees in order to extort their action or inaction.<sup>7</sup> The statute provides that “[e]very person who, with intent to cause, attempts to cause, or causes, any . . . employee of any public . . . educational institution . . . to do, or refrain from doing, any act in the performance of his duties, by means of a threat, directly communicated to such person, to inflict an unlawful injury upon any person or property, and it reasonably appears to the recipient of the threat that such threat could be carried out, is guilty of a public offense . . . .”<sup>8</sup> The elements of the offense are: ““(1) A threat to inflict an unlawful injury upon any person or property; (2) direct communication of the threat to a public officer or employee; (3) the intent to influence the performance of the officer or employee’s official duties; and (4) the apparent ability to carry out the threat.””<sup>9</sup> The proscribed act is the threat with the specific intent to interfere with the

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<sup>4</sup> *In re Cheri T.* (1999) 70 Cal.App.4th 1400, 1404; *In re Jose R.* (1982) 137 Cal.App.3d 269, 275.

<sup>5</sup> *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Jones* (1990) 51 Cal.3d 294, 314.

<sup>6</sup> *People v. Stanley* (1995) 10 Cal.4th 764, 792.

<sup>7</sup> *In re Ernesto H.* (2004) 125 Cal.App.4th 298, 308.

<sup>8</sup> Penal Code section 71.

<sup>9</sup> *In re Ernesto H.*, *supra*, 125 Cal.App.4th at page 308, quoting *People v. Hopkins* (1983) 149 Cal.App.3d 36, 40.

official's duties.<sup>10</sup> Concerning the threat, "[a]ll that is required is that the victim perceive it reasonably possible that the threat will be carried out."<sup>11</sup>

Here there is sufficient evidence Jamaal M. violated Penal Code section 71. Although he complied with Franklin's demand to relinquish his belt, Jamaal M. unambiguously threatened the assistant principal with physical harm, and he continued his threats while knocking items off the front office counter and refusing to be escorted into Franklin's office. Based on Jamaal M.'s belligerent behavior and his earlier aggressive conduct towards the principal, Franklin believed Jamaal M. would possibly retaliate against him. From these facts, the juvenile court reasonably inferred Jamaal M. was attempting to coerce Franklin either to return the belt immediately or to refrain in the future from prohibiting Jamaal M. to wear gang-influenced student attire. It was also reasonable for the court to infer Jamaal M. could carry out his threats of physical harm.<sup>12</sup> The evidence, therefore, is sufficient to support the juvenile court's findings and order.<sup>13</sup>

## **2. Constitutionality of Probation Condition 21**

Among the probation conditions orally imposed was "21, Don't use or possess them." Jamaal M. did not object to this condition at the disposition hearing.

In the preprinted portion of the June 1, 2005 minute order, condition 21 is checked and reads, "Do not use or possess narcotics, controlled substances, poisons, or related paraphernalia; stay away from places where users congregate."

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<sup>10</sup> *People v. Hopkins, supra*, 149 Cal.App.3d at page 41.

<sup>11</sup> *In re Marcus T.* (2001) 89 Cal.App.4th 468, 472; see also *In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1139.

<sup>12</sup> Although Franklin testified on cross-examination he was not afraid of Jamaal M., actual fear on behalf of the threatened school official is not an element of the offense, as the juvenile court noted in denying Jamaal M.'s motion to dismiss.

<sup>13</sup> Jamaal M.'s objections are, in effect, simply an invitation for us to reweigh the evidence; that, of course, is not the function of an appellate court. (*People v. Memro* (1995) 11 Cal.4th 786, 846; *People v. Culver* (1973) 10 Cal.3d 542, 548; *In re E.L.B.* (1985) 172 Cal.App.3d 780, 788.)

At the outset, we reject Jamaal M.’s claim the discrepancy between the oral pronouncement and the minute order is a clerical error,<sup>14</sup> requiring the minute order to be modified to conform to the oral pronouncement.<sup>15</sup> We agree with the People the record shows, rather than differing from the minute order, the oral pronouncement was intended as an abbreviated reference by the juvenile court to condition 21 as it appears in its entirety in the minute order. There is no clerical error to be corrected on appeal.

Alternatively, Jamaal M. contends the condition he “stay away from places where users congregate” is unconstitutionally vague and overbroad and urges us to modify it to include a knowledge requirement.<sup>16</sup> The People argue Jamaal M. has forfeited his challenge to this condition by failing to object in the juvenile court and, in any event, the requirement of knowledge is implicit in the condition as imposed.

Without reaching the issue of waiver or forfeiture, we agree, reasonably read, the condition necessarily includes the requirement of knowledge. In other words, it is necessarily implied Jamaal M. must be aware the individuals congregating at a particular place are narcotics users for the condition to be triggered. This conclusion is reinforced by the language of a related condition of probation, condition 22, which the juvenile court also imposed. It provides, “Do not associate with persons known to be users or sellers of narcotics/controlled substances, except with the prior written permission of the Probation Officer.” However, to eliminate the possibility of any improper, overly broad interpretation of condition 21, we modify it to expressly include a knowledge requirement.<sup>17</sup>

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<sup>14</sup> *People v. Farell* (2002) 28 Cal.4th 381, 384, footnote. 2; *People v. Mesa* (1975) 14 Cal.3d 466, 471.

<sup>15</sup> See *People v. Mitchell* (2001) 26 Cal.4th 181, 183, 185-188.

<sup>16</sup> This issue is presently before the Supreme Court in *In re Sheena K.* (2004) 116 Cal.App.4th 436, review granted June 9, 2004, S123980.

<sup>17</sup> See *People v. Garcia* (1993) 19 Cal.App.4th 97, 103.

## **DISPOSITION**

Condition 21 is modified to read: “Do not use or possess narcotics, controlled substances, poisons or related paraphernalia; stay away from places where users known to you congregate.” As modified the order is affirmed.

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JOHNSON, Acting P. J.

We concur:

WOODS, J.

ZELON, J.